

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

ROGER FREELAND, on his own behalf,
ROSELYN FREELAND, on her own behalf,
and as mother and next friend of REX FREELAND
a minor with severe brain damage,

01 JUN -5 AM 11:30

Rex
Court
ef

Plaintiffs,

vs.

No. 99-1500 MV/WWD ACE

THE UNITED STATES OF AMERICA,

Defendant.

THE PARTIES' PROPOSED STIPULATED FINDINGS OF FACT

1. On May 10, 1999 Rex Freeland was fifteen years of age.
2. Rex Freeland was, and is, a Native American, a member of the Navajo Tribe.
3. On May 10, 1999 Rex was taken to Gallup Indian Medical Center (GIMC) by his mother.
4. Dr. Jerome Holbrook, a dentist board certified in oral surgery, admitted Rex to GIMC with a diagnosis of right facial cellulitis involving the lateral pharyngeal, right submandibular, right submental, and left submental spaces; carious tooth number thirty-one and multiple carious teeth.
5. Dr. Holbrook recommended that Rex undergo an incision and drainage procedure.

6. At the time, Dr. Holbrook was a Commander in the Commissioned Corps, Indian Health Service, United States Public Health Service, which is a division of the Department of Health and Human Services of the Government of the United States.

7. At the time, Dr. Holbrook was assigned to the Navajo area of the Indian Health Service, and was stationed at the Gallup Indian Medical Center.

8. Since 1987, Dr. Holbrook had been a member of the Commissioned Corps, stationed at a succession of Indian Health Service (IHS) posts, including the IHS Indian School Health Center in Many Farms, Arizona, the PHS Indian Hospital in Whiteriver, Arizona, and the PHS Indian Hospital in Tuba City, Arizona.

9. Dr. Holbrook undertook to provide care and treatment to Rex Freeland.

10. Dr. Holbrook undertook to perform oral surgery commencing at approximately 2:55 p.m. on May 10.

11. Prior to the surgery, Rex was intubated nasally with an endotracheal tube placed through his nose into his pharynx and down into his bronchial tube. During the surgery he received general anesthesia intravenously and through the endotracheal tube.

12. Michael Steele was on May 10, 1999 a registered nurse, licensed in New Mexico, with specialty training as a Certified Registered Nurse Anesthetist (CRNA).

13. Nurse Steele is a Captain in the Commissioned Corps, IHS, Public Health Service, which is a division of the Department of Health and Human Services of the Government of the United States.

14. Nurse Steele was assigned to the Navajo Area Indian Health Service and was stationed at Gallup Indian Medical Center.

15. Nurse Steele undertook to provide care and treatment to Rex Freeland on May 10, 1999.

16. According to the hospital records, the surgical procedure was completed at approximately 3:30 p.m., at which time Rex Freeland was breathing spontaneously and maintaining oxygen saturation, with blood pressure of 160/90, a heart rate of approximately 150 beats per minute, respiratory rate of 20 breaths per minute, and oxygen saturation of 99%.

17. The plan was to transfer Rex to the ICU for observation because of concern about his airway.

18. During the surgery Rex had been receiving oxygen through the endotracheal tube.

19. Geraldine Winkler, R.N., is the nurse who was on duty in the intensive care unit when Rex arrived.

20. The decision to remove the endotracheal tube was made jointly by Dr. Holbrook and Nurse Steele.

21. Rex Freeland is and will for the rest of his life remain in a persistent vegetative state.

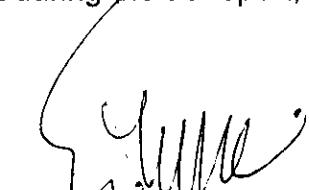
22. Rex Freeland had no brain damage prior to the surgery.

23. Rex Freeland will never be able to obtain any form of gainful employment.

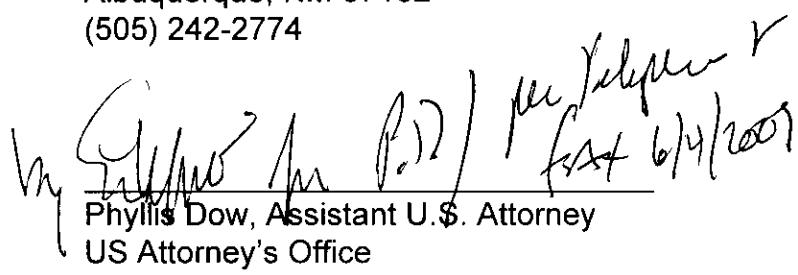
24. Rex Freeland will never be able to care for himself.

25. Administrative Claim Forms (Form 95) were mailed on behalf of Rex Freeland, Roger Freeland, and of Roselyn Freeland on June 18, 1999, received by GIMC on June 21, 1999, and received by the Claims Branch on July 2, 1999.

26. By operation of law these claims were denied six months later.
27. On December 28, 1999 this lawsuit was filed in the United States District Court for the District of New Mexico.
28. Dr. Holbrook testified in his deposition that:
 - A. He admitted Rex to the hospital;
 - B. He was responsible for Rex's care;
 - C. He performed the surgery;
 - D. He accompanied Rex to the ICU;
 - E. Rex Freeland was still his patient during the transport;



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